

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL  
MORTGAGE BACKED SECURITIES  
LITIGATION,

This Document Relates to: ALL CASES

Master Case No. C09-037 MJP

[Consolidated with: Case Nos.  
CV09-0134 MJP, CV09-0137 MJP, and  
CV09-01557 MJP]

**DECLARATION OF JOHN D. PERNICK  
IN SUPPORT OF DEFENDANTS'  
MOTION TO AMEND SCHEDULING  
ORDER**

**NOTE ON MOTION CALENDAR:  
AUGUST 5, 2011**

I, John D. Pernick, hereby declare as follows under penalty of perjury pursuant to  
28 U.S.C. § 1746:

1. I am an attorney at law licensed to practice in the State of California. I am a  
member of the firm of Bingham McCutchen LLP, counsel of record for Defendants WaMu  
Asset Acceptance Corporation, WaMu Capital Corporation, David Beck, Diane Novak,  
Richard Careaga and Rolland Jurgens (collectively, "Defendants") in this action. By virtue of  
my representation of Defendants in this matter, I have personal knowledge of the facts set

*Declaration of John D. Pernick in Support of  
Defendants' Motion to Amend Scheduling Order:  
(CV09-037 MJP) - 1*

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1 forth below, or knowledge based on information and belief, and could and would testify  
2 competently to those facts if called to do so.

3           2.       The loans underlying the RMBS at issue were originated and initially serviced  
4 by Washington Mutual Bank (“WMB”). Documents relating to WMB’s loan origination  
5 business and to the origination and servicing of the loans at issue here are in JPMorgan’s  
6 custody. Those documents generally fall into four categories: (a) the origination files for the  
7 more than 14,000 loans underlying the RMBS at issue; (b) custodial documents (email and  
8 other records) of a group of 59 custodians whose data JPMorgan agreed to review and  
9 produce; (c) electronic records concerning the servicing of the loans (*e.g.*, notes of  
10 communications with borrowers regarding delinquencies, defaults, other and issues); and  
11 (d) documents JPMorgan previously produced in response to subpoenas from the Senate  
12 Permanent Subcommittee on Investigations (the “PSI”).  
13

14           3.       JPMorgan has already produced over 1.5 million documents which total over  
15 9 million pages from its production to the PSI and custodial documents. By July 29,  
16 JPMorgan will have also produced over 75,000 documents totaling over 1 million pages in  
17 loan origination files.  
18

19           4.       I have had communications with counsel for JPMorgan from the Sidley and  
20 Austin firm regarding the status of JPMorgan’s production. Matthew Jackson of Sidley and  
21 Austin has informed me that, despite having produced a substantial number of documents.  
22 JPMorgan expects to complete production of the custodians’ data in two weeks (*i.e.*, by  
23 August 12, 2011). And although a large number of loan files will have been produced by  
24 July 29, 2011, that production will not be “substantially complete” for at least several more  
25 weeks. Among other things, although JPMorgan located electronic copies of documents for  
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1 every origination file for every loan at issue, it is also searching for hard copies of those files  
2 in an abundance of caution. In addition, JPMorgan is in the process of completing its search  
3 of the loan servicing system, and archives of information from that system, for servicing  
4 information related to the loans underlying the RMBS at issue. This effort requires the  
5 assistance of third-party vendors, and Mr. Jackson informed me that JPMorgan hopes to  
6 substantially complete that effort by the end of September.  
7

8           5. Documents relating to the securitization process are in WCC's custody. WCC  
9 completed production of: (a) the offering documents relating to the securitizations, including,  
10 among other things, the Pooling and Servicing Agreements, the Mortgage Loan Purchase  
11 Agreements and the "loan tapes" (that provide detailed information about the loans in the  
12 securitization) on January 12, 2011; and (b) trading information about the RMBS at issue here  
13 on March 1, 2011.  
14

15           6. In addition, WCC searched its entire email archive (more than 30 million  
16 messages and 1 terabyte of compressed data) for communications and other documents  
17 relating to the offerings at issue. The collection and review of those documents identified  
18 115,000 likely responsive documents. Approximately 60,000 of those documents, totaling  
19 well over 3 million pages, will have been produced by July 29, 2011. The completion of the  
20 review (including privilege review) and production of responsive documents from the WCC  
21 email archive is expected to be substantially completed by August 12, 2011.  
22

23           7. WCC has identified an additional data set that may include responsive  
24 documents—data from its prior "shared drives" that contain documents WCC employees  
25 stored on WCC's servers. WCC reviewed this "shared drive" data to ensure that all sources  
26 of potentially responsive documents were identified. During that process, WCC identified at  
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1 least an additional half a terabyte of data that had been located in folders on its file servers  
 2 that must be reviewed for responsiveness. That data is now undergoing processing, review  
 3 and procedures for production. WCC anticipates completing that review and production by  
 4 the end of September.  
 5

6 8. Given the nearly complete absence of former WCC employees knowledgeable  
 7 about the location and nature of WCC's documents, locating potentially responsive  
 8 documents (electronic and otherwise), loading those documents for review, reviewing the  
 9 documents (for responsiveness and privilege) and producing those documents has been simply  
 10 more difficult and taken longer than expected. The time required to produce WMB  
 11 documents is further impacted by the fact that JPMorgan, which is now the custodian of those  
 12 documents as a result of its having acquired certain WMB assets from the FDIC, had no prior  
 13 involvement in WMB's business, as well as by the fact that virtually all of the WMB  
 14 employees who were involved in the creation of potentially responsive documents have long  
 15 since departed. In addition, locating information relating to the origination of the over 14,000  
 16 loans in the six offerings at issue—as well as the securitization of those loans—has required  
 17 collecting documents from various repositories—electronic and otherwise. Despite WCC's  
 18 and JPMorgan's efforts, they will need an additional two months to “substantially complete”  
 19 production.  
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23 EXECUTED this 28th day of July, 2011, at San Francisco, California.  
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 25  
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27 By: / s / John D. Pernick  
 28 John D. Pernick

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of July, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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5 DATED this 28th day of July, 2011 at Seattle, Washington.

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